

HB0208S01 compared with HB0208

~~{deleted text}~~ shows text that was in HB0208 but was deleted in HB0208S01.

inserted text shows text that was not in HB0208 but was inserted into HB0208S01.

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Representative V. Lowry Snow proposes the following substitute bill:

DOMESTIC ASSET PROTECTION TRUST AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to domestic asset protection trusts.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ delineates provisions regarding real property transferred to the trust;
- ▶ clarifies a ~~{settlor-trustee's}~~settlor-trustee's role in determining discretionary distributions;
- ▶ makes clarifying changes to claims for relief for fraudulent transfers; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

25-6-14, as repealed and reenacted by Laws of Utah 2013, Chapter 284

~~{ **59-10-202**, as last amended by Laws of Utah 2010, Chapter 6~~

+ **75-7-816**, as enacted by Laws of Utah 2004, Chapter 89

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **25-6-14** is amended to read:

25-6-14. Asset Protection Trust.

(1) As used in this section:

(a) "Creditor" means:

(i) a creditor or other claimant of the settlor existing when the trust is created; or

(ii) a person who subsequently becomes a creditor, including, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:

(A) one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or

(B) one with a right to payment.

(b) "Insolvent" has the same meaning as in Section 25-6-3.

~~[(b)]~~ (c) "Property" means real property, tangible or intangible personal property, and interests in real property or tangible or intangible personal property.

~~[(c)]~~ (d) "Settlor" means a person who transfers property in trust.

~~[(d)]~~ (e) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

~~[(e)]~~ (f) "Trust" has the same meaning as in Section 75-1-201.

(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use or occupancy of real property or tangible or intangible personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

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(3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

(a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;

(b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

(c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.

(4) (a) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary.

(b) Notwithstanding Subsection (3), nothing in this section may be construed to nullify or impair any security interest that was granted by the settlor with respect to property transferred to the trust.

(c) If property contributed to the trust is conveyed to the settlor or to another beneficiary only for the purpose of obtaining a loan secured by a mortgage or deed of trust on the property and is then reconveyed to the trust, the conveyance is disregarded and the reconveyance relates back to the date the property was initially contributed to the trust. The mortgage or deed of trust on the property shall be enforceable against the trust.

(5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be satisfied. Where this Subsection (5) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (5). An agreement or understanding, ~~expressed~~ express or implied, between the settlor and the trustee that attempts to grant or permit the retention by the settlor of greater rights or authority than is stated in the trust instrument is void.

(a) The trust instrument shall provide that the trust is governed by Utah law and [is ~~established pursuant to~~] this section.

(b) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

(c) The trust instrument shall provide that neither the interest of the settlor, as

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beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of ~~[Section]~~ 11 U.S.C. Sec. 541(c)(2) ~~[of the Bankruptcy Code]~~.

(d) The settlor may not have the ability under the trust instrument to revoke, amend, or terminate all or any part of the trust, or to withdraw property from the trust, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor: provided that the settlor may have the ability to substitute assets of substantially equivalent value.

(e) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

~~[(f)] The settlor may not benefit from, direct a distribution of, or use trust property except as stated in the trust instrument. An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.]~~

~~[(g)]~~ (f) The trust instrument shall require that, at least 30 days before ~~[making]~~ paying or delivering any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a child support judgment or child support order against the settlor. The trust instrument shall require that the notice state the date the distribution will be ~~[made]~~ paid and delivered and the amount of the distribution.

~~[(h)]~~ (g) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under any child support judgment or order.

~~[(i)]~~ (h) A transfer of assets to the trust may not render the settlor insolvent.

~~[(j)]~~ (i) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.

~~[(k)] At the time that the settlor transfers any assets to the trust, the settlor may not be contemplating filing for relief under the provisions of the Bankruptcy Code.]~~

~~[(l)]~~ (j) Assets transferred to the trust may not be derived from ~~[unlawful]~~ criminal

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activities.

~~[(m)]~~ (k) At the time the settlor transfers any assets to the trust, the settlor shall sign a sworn affidavit stating that:

- (i) the settlor has full right, title, and authority to transfer the assets to the trust;
- (ii) the transfer of the assets to the trust will not render the settlor insolvent;
- (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;
- (iv) there are no pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit;
- (v) the settlor is not involved in any administrative proceedings that would reasonably be expected to have a material adverse financial effect on the settlor, except those administrative proceedings identified on an attachment to the affidavit;
- (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a child support obligation;
- (vii) the settlor does not contemplate filing for relief under the provisions of ~~[the Bankruptcy Code]~~ 11 U.S.C. Sec. 101, et seq.; and
- (viii) the assets being transferred to the trust were not derived from ~~[unlawful]~~ criminal activities.

(6) Failure to satisfy the requirements of Subsection (5) shall result in the consequences described in this Subsection (6).

(a) If any requirement of Subsections (5)(a) through ~~[(g)]~~ (f) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (3).

(b) If the trustee does not send the notice required under Subsection (5)~~[(g)]~~(f), the court may authorize any person with a child support judgment or child support order against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:

- (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or
- (ii) force or require the trustee to make a distribution to the settlor, as beneficiary. No creditor of the settlor other than a person who has a child support judgment or child support

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order against the settlor shall have a right to relief under this Subsection (6) as a result of the trustee's failure to provide the notice required under Subsection (5)(f).

(c) If the requirement set forth in Subsection (5)(g) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (3) with respect to any person with a child support order or child support judgment against the settlor.

~~[(c)]~~ (d) If any requirement set forth in Subsections (5)(h) through [(m)] (k) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (3). Any claim that Subsection (5)(h) or Subsection (5)(i) is not satisfied shall be established by clear and convincing evidence.

~~(7) [The provisions of Subsection (3) may apply to a trust even if]~~ The following provisions will not disqualify a trust from the protections described in Subsection (3) if the requirements of this section are otherwise satisfied:

(a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that [the settlor may not participate in the] any determination as to whether a discretionary distribution will be made[;] to the settlor shall be made only by trustees other than the settlor. The settlor may not be considered to be involved in the determination as to whether a discretionary distribution was made to the settlor solely because the settlor:

(i) requested the distribution from the trust;

(ii) consulted with the trustees regarding the distribution;

(iii) exercised a right to consent to or veto the distribution pursuant to a power described in Subsection (7)(d); or

(iv) signed documentation in a trustee's capacity as a cotrustee implementing the distribution, so long as the other trustees independently authorized the distribution in their discretion;

(b) the settlor has the authority under the terms of the trust instrument to appoint nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

(c) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;

(d) the trust instrument gives the settlor the power to consent to or veto a distribution

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from the trust;

(e) the trust instrument gives the settlor an inter vivos or a testamentary nongeneral power of appointment or similar power;

(f) the trust instrument gives the settlor the right to receive the following types of distributions:

(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

(ii) principal, subject to an ascertainable standard set forth in the trust;

(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. 664;

(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. 643(b);

(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. 2702 and the accompanying regulations; [~~and~~]

(vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. Sec. 2702; [~~or~~] and

(vii) income from ~~the~~a trust intended to qualify for the federal estate tax or gift tax marital deduction under 26 U.S.C. Sec. 2056(b)(7) or 26 U.S.C. Sec. 2523(f);

(g) the trust instrument authorizes the settlor to use real or personal property owned by the trust[-];

(h) (i) the settlor gives a personal guarantee with respect to any debt or obligation secured by property that is held in the trust and the settlor directly or indirectly pays or makes payments on the debt or obligation; or

(ii) the settlor directly pays property taxes, casualty and liability insurance premiums, maintenance expenses, homeowners association dues, or other similar expenses with respect to property held in the trust; or

(i) the settlor pays income tax with respect to items of income ~~attributed~~attributable to that portion of the trust of which the settlor is considered to be the owner under 26 U.S.C. Sec. 671 through 678, which payments may not constitute additional transfers to the trust for

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purposes of this section.

(8) If a trust instrument contains the provisions described in Subsections (5)(a) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance or transfer, aiding and abetting a fraudulent conveyance or transfer, participation in the trust transaction, or similar cause of action or claim for relief. For purposes of this subsection, counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:

- (a) the trust and the trust assets; and
- (b) the settlor, to the extent otherwise allowed in this section.

(9) ~~[A cause of action or claim for relief regarding a fraudulent transfer of a settlor's assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is brought within the earlier of]~~ The exclusive remedy for a claim that Subsection (5)(h) or Subsection (5)(i) was not satisfied with respect to the transfer of assets to a trust created under this section shall be a claim under Subsection ~~26-6-5~~25-6-5(1)(a), 25-6-5(1)(b) for the purposes of a claim for reimbursement arising under the Medicaid Benefits Recovery Act, or 25-6-6(1), as applicable. No other cause of action or claim for relief under Sections 25-6-1 through 25-6-13 shall apply to the transfer of a settlor's assets to a trust created under this section. Notwithstanding any other provisions of Sections 25-6-1 through 25-6-13 to the contrary, any permissible cause of action or claim for relief for a fraudulent transfer of settlor's assets to a trust created under this section is extinguished unless the action is brought by a creditor of the settlor who was a creditor of the settlor before the assets in question were transferred to the trust and the action is brought within the earlier of:

- (a) the later of:
- (i) two years after the transfer is made; or

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(ii) one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

(A) can demonstrate, by ~~[a preponderance of the]~~ clear and convincing evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(B) files another action, other than an action ~~[under Subsection (5)(j)]~~ alleging a fraudulent transfer, against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this Subsection (9) is filed within two years after the transfer~~[-];~~ or

(b) (i) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name of the settlor, ~~[and]~~ the address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that he is required to ~~[present his claim to both the settlor and the trustee]~~ bring an action or claim for relief within 120 days from the mailing of the notice or be forever barred; or

(ii) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides or is published on a public legal notice website as required by Section 45-1-101, which notice shall state the name ~~[and]~~ of the settlor, the address of the settlor or the settlor's representative, the name and address of the trustee or the trustee's representative, and also describe the assets that were transferred, but does not need to state the value of those assets ~~[if the assets are other than cash]~~.

(10) The notice ~~[required {f} in {f} by]~~ referred to in Subsection (9)(b) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to ~~[present claims]~~ bring an action or claim for relief within 120 days from the first publication of the notice or be forever barred. Failure to give the notice ~~as required by~~ referred to in Subsection (9)(b) to one creditor may not prevent the shortening of the limitations period under Subsection (9)(b) with respect to any creditor to whom such notice was properly given, whether by mail or publication.

(11) (a) With respect to a trust governed by this section, the rights of the creditors of

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nonsettlor beneficiaries shall be governed by the provisions of Title 75, Chapter 7, Utah Uniform Trust Code. With respect to an irrevocable trust of which the settlor is a beneficiary that is not governed by this section, the rights of the creditors of the settlor shall be governed by the provisions of Section 75-7-505.

(b) To the extent the provisions in this section conflict with the provisions of Sections 25-6-1 through 25-6-13, the provisions of this section take precedence.

~~[(11)]~~ (12) (a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

(b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

(13) Nothing in this section may be construed to alter any rights that may have vested or been created [under this section](#) prior to May 14, 2013.

Section 2. Section ~~{59-10-202}~~ [75-7-816](#) is amended to read:

~~{~~ ~~59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust:~~

~~_____ (1) There shall be added to unadjusted income of a resident or nonresident estate or trust:~~

~~_____ (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;~~

~~_____ (b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:~~

~~_____ (i) a state other than this state;~~

~~_____ (ii) the District of Columbia;~~

~~_____ (iii) a political subdivision of a state other than this state; or~~

~~_____ (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through (iii);~~

~~_____ (c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:~~

~~_____ (i) in an S corporation; and~~

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- ~~—— (ii) that is held by an electing small business trust;~~
- ~~—— (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:~~
 - ~~—— (i) is not expended for:~~
 - ~~—— (A) higher education costs as defined in Section 53B-8a-102; or~~
 - ~~—— (B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and~~
 - ~~—— (ii) is:~~
 - ~~—— (A) subtracted by the resident or nonresident estate or trust:~~
 - ~~—— (I) that is the account owner; and~~
 - ~~—— (II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or~~
 - ~~—— (B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; and~~
 - ~~—— (C) any fiduciary adjustments required by Section 59-10-210.~~
- ~~—— (2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:~~
 - ~~—— (a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;~~
 - ~~—— (b) income of an irrevocable resident trust if:~~

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- ~~—— (i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;~~
- ~~—— (ii) the trust first became a resident trust on or after January 1, 2004;~~
- ~~—— (iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;~~
- ~~—— [(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);]~~
- ~~—— [(v)] (iv) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and~~
- ~~—— [(vi)] (v) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;~~
- ~~—— (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:~~
 - ~~—— (i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and~~
 - ~~—— (ii) from a source within the Uintah and Ouray Reservation;~~
 - ~~—— (d) any amount:~~
 - ~~—— (i) received by a resident or nonresident estate or trust;~~
 - ~~—— (ii) that constitutes a refund of taxes imposed by:~~
 - ~~—— (A) a state; or~~
 - ~~—— (B) the District of Columbia; and~~
 - ~~—— (iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;~~
 - ~~—— (e) the amount of a railroad retirement benefit:~~
 - ~~—— (i) paid:~~
 - ~~—— (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;~~
 - ~~—— (B) to a resident or nonresident estate or trust derived from a deceased resident or~~

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~~nonresident individual; and~~

~~—— (C) for the taxable year; and~~

~~—— (ii) to the extent that railroad retirement benefit is included in total income on that~~

~~resident or nonresident estate's or trust's federal tax return for estates and trusts;~~

~~—— (f) an amount:~~

~~—— (i) received by a resident or nonresident estate or trust if that amount is derived from a deceased enrolled member of an American Indian tribe; and~~

~~—— (ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:~~

~~—— (A) federal law;~~

~~—— (B) a treaty; or~~

~~—— (C) a final decision issued by a court of competent jurisdiction;~~

~~—— (g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for the taxable year; and~~

~~—— (h) any fiduciary adjustments required by Section 59-10-210.~~

~~—— (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:~~

~~—— (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or~~

~~—— (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:~~

~~—— (i) the entity; or~~

~~—— (ii) (A) the state in which the entity is located; or~~

~~—— (B) the District of Columbia, if the entity is located within the District of Columbia.~~

~~—— (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:~~

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- ~~_____ (i) the income is derived from a deceased Ute tribal member; and~~
 - ~~_____ (ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).~~
 - ~~_____ (b) The agreement described in Subsection (4)(a):~~
 - ~~_____ (i) may not:~~
 - ~~_____ (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;~~
 - ~~_____ (B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(c); or~~
 - ~~_____ (C) affect the power of the state to establish rates of taxation; and~~
 - ~~_____ (ii) shall:~~
 - ~~_____ (A) provide for the implementation of the subtraction described in Subsection (2)(c);~~
 - ~~_____ (B) be in writing;~~
 - ~~_____ (C) be signed by:~~
 - ~~_____ (I) the governor; and~~
 - ~~_____ (II) the chair of the Business Committee of the Ute tribe;~~
 - ~~_____ (D) be conditioned on obtaining any approval required by federal law; and~~
 - ~~_____ (E) state the effective date of the agreement.~~
 - ~~_____ (c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.~~
 - ~~_____ (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.~~
 - ~~_____ (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:~~
 - ~~_____ (i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and~~
 - ~~_____ (ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.~~
 - ~~_____ Section 3. Section 75-7-816 is amended to read:~~
- ‡ **75-7-816. Recitals when title to real property is in trust -- Failure.**

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(1) When title to real property is granted to a person as trustee, the terms of the trust may be given either:

(a) in the deed of transfer; or

(b) in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.

(2) If the terms of the trust are not made public as required in Subsection (1), a conveyance from the trustee is absolute in favor of purchasers for value who take the property without notice of the terms of the trust.

(3) The terms of the trust recited in the deed of transfer or the instrument recorded under Subsection (1)(b) shall include:

(a) the name of the trustee;

(b) the address of the trustee; and

(c) the name and date of the trust.

~~[(4) Any real property titled in a trust which has a restriction on transfer described in Section 25-6-14 shall include in the title the words "asset protection trust."]~~

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Legislative Review Note

~~as of 1-30-14 3:58 PM~~

~~Office of Legislative Research and General Counsel}~~